

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MARC S. KIRSCHNER,
as Trustee of the Refco Private Actions Trust,

Plaintiff,

v.

PHILLIP R. BENNETT, SANTO C. MAGGIO,
ROBERT C. TROSTEN, MAYER, BROWN,
ROWE & MAW, LLP, GRANT THORNTON
LLP, and ERNST & YOUNG U.S. LLP,

Defendants.
----- x

07 Civ. 8165 (GEL)

ANSWER OF
PHILLIP R. BENNETT

Defendant Phillip R. Bennett, by and through his attorneys, Golenbock Eiseman Assor Bell & Peskoe LLP, without waiving any constitutional, statutory or common law rights or privileges, responds to the Complaint as follows:

1. In response to the Complaint, Mr. Bennett: refers to the documents referenced therein for a complete and accurate statement of their contents; states that to the extent the allegations are directed to any defendant other than him or set forth legal conclusions, no response is required; denies that plaintiffs are entitled to any relief from him; and otherwise asserts the privilege against self-incrimination accorded to Mr. Bennett by the Constitutions of the United States and the State of New York and, by reason of the assertion of such privilege, states that he is unable to admit or deny any of the allegations in the Complaint.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Complaint and each of the alleged causes of action therein, Mr. Bennett, without conceding that he bears the burden of proof as to any of the following issues, and without waiving any of his constitutional, statutory or

common law rights or privileges, and while reserving the right to assert additional or different defenses based upon additional evidence developed in discovery or otherwise, alleges as follows:

First Affirmative Defense

2. The Complaint, and each cause of action therein, fails to state a claim upon which relief can be granted.

Second Affirmative Defense

3. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches and unclean hands.

Third Affirmative Defense

4. To the extent plaintiffs' sustained any damage, loss or injury, any damage award against Mr. Bennett should be reduced, diminished and/or eliminated to reflect only Mr. Bennett's percentage of responsibility, if any.

Fourth Affirmative Defense

5. Plaintiffs' claims are barred in whole or in part by the comparative or contributory fault of theirs and/or third parties, including, but not limited to, current and/or former personnel of Refco, Inc. and/or Refco Capital Markets, Ltd.

This Answer is submitted without waiver of any of Mr. Bennett's constitutional, statutory or common law rights or privileges, including the privilege against self-incrimination afforded by the Constitutions of the United States and the State of New York.

WHEREFORE, defendant Phillip R. Bennett respectfully requests that judgment be entered:

A. Dismissing the Complaint, and each cause of action therein, with prejudice, as to Mr. Bennett;

B. Awarding Mr. Bennett his costs, including reasonable attorneys' fees, and disbursements in connection with this action; and

C. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 6, 2008

GOLENBOCK EISEMAN ASSOR BELL
& PESKOE LLP

By: /s/ Jeffrey T. Golenbock
Jeffrey T. Golenbock (JG 2217)
Adam C. Silverstein (AS 4876)

437 Madison Avenue, 35th Floor
New York, New York 10022-7302
(212) 907-7300

Attorneys for Defendant Phillip R. Bennett